



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/338,489	03/18/97	STAGGS J	

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HM42/0924

EXAMINER  
WEDDINGTON, K

ART UNIT PAPER NUMBER  
1614 17

DATE MAILED: 09/24/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/338,489**

Applicant(s)  
**Staggs**

Examiner  
**Kevin E. Weddington**

Group Art Unit  
**1614**



☒ Responsive to communication(s) filed on March 18, 1997; October 14, 1997; July 1, 1998 and July 23, 1998.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-10, 35, and 51-90 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10, 35, and 51-90 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10 and 16

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1205

Claims 1-10, 35 and 51-90 are presented for examination.

Applicant's preliminary amendment filed March 18, 1997 and information disclosure statements filed October 14, 1997 and July 23, 1998 have been received and entered.

Applicant's election filed July 1, 1998 in response to the restriction requirement of May 26, 1998 has been received and entered. The applicant elected claims 1-10, 35 and 51-55 and canceled claims 11-34 and 36-50.

***Claim Rejections - 35 U.S.C. § 112***

Claims 53 and 55-90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 53 and 55 are rendered indefinite because rely on figures that are not disclosed in the claims. Claim 53 does not disclose or show what is a capsaicinoid analog. Claim 55 does not disclosed or show what is a piperidine constituent.

Claims 56-90 are rendered indefinite because they depend upon canceled claims 15, 16, 45, 47 and 48.

Art Unit: 1205

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 35 and 51-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaurasia et al. (R) and Jain et al. (S) .

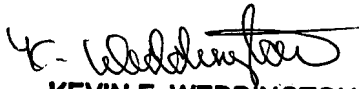
The two cited references teach a pepper plant of the species *Piper nigrum* possesses antifungal activity against various pathogenic and non-pathogenic fungi. (See the abstract and the applicant's supplied copy)

The instant invention differs from the cited reference in that the cited reference do not teach the pepper plant is effective against specific types of fungi as disclosed in applicant's claim 3. However, one skilled in the art would have been motivated to use the pepper plant to treat the specific fungi of claim 3 since the pepper plant is well-known to possess antifungal activity in the absence of evidence to the contrary.

Claims 1-10, 35 and 51-90 are not allowed.

Art Unit: 1205

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner K. Weddington whose telephone number is (703) 308-1235.

  
**KEVIN E. WEDDINGTON**  
**PRIMARY EXAMINER**  
*Art Unit 1614*

K. Weddington

September 21, 1998